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ant street railway company which was maintaining its tracks on that street under a charter imposing upon it the duty to "keep the surface of the street inside the rails and for one foot outside thereof in good order and repair," etc. The company having failed to perform the work, the city completed the pavement of the entire street, and sued the railway company for the cost of its portion. *Held*, that it could recover. *Mayor, etc., of City of New York v. Harlem Bridge M. & F. Ry. Co.* (1906), — N. Y. —, 78 N. E. Rep. 1072.

From neither the opinion nor the statement of facts given in the Reporter is it clear whether the street had never been paved before or whether it was a repavement. If the latter, the decision is supported by the following New York cases: *Conway v. City of Rochester*, 157 N. Y. 33, 51 N. E. 395; *Binninger v. City of New York*, 177 N. Y. 199, 69 N. E. 390; and *Village of Mechanicsville v. Stillwater & M. St. Ry. Co.*, 35 Misc. Rep. 513, 71 N. Y. Supp. 1102, affirmed 174 N. Y. 507. In the last case the street had been previously paved only with small stone. Some authorities maintain that when it is not a case of repavement but of pavement in the first instance the same rule does not apply. See 27 AM. & ENG. ENC. OF LAW, 42. It is not perfectly clear, though, why such a distinction should be made. It seems that a street railway company is bound to keep its portion of the street in repair even in the absence of express provision imposing the duty. *Worster v. Railway Co.*, 50 N. Y. 203; *State v. Hoboken*, 41 N. J. L. 71; *Railway Co. v. State*, 87 Tenn. 746. The duty is, however, usually expressly imposed, and the question arising most often is, whether the duty to repair includes the duty to improve. On this point the decisions are diverse. See ELLIOTT, ROADS AND STREETS, §§ 772 et seq., and cases cited therein; also *Chicago v. Sheldon*, 9 Wall. 50; *Paving & Supply Co. v. Railway Co.*, 128 Ind. 525, 25 Am. St. Rep. 462; *Florida v. Jacksonville St. Ry. Co.*, 29 Fla. 590. A very late case that has carried the doctrine about as far as any is *City of Reading v. United Traction Company* (1906), — Pa. St. —, 64 Atl. 446, in which the Supreme Court of Pennsylvania held the railway company liable for cost of putting down pavement, the jury having found that notice was given and that the repairing was reasonable, necessary and proper. For further cases involving the general principle of the principal case see *Fielders v. Railway Co.*, 67 N. J. L. 76, 50 Atl. 533; *Doyle v. New York*, 58 App. Div. 588, 69 N. Y. Supp. 120; *Columbus v. Railway Co.*, 45 Oh. St. 98, 12 N. E. 651; *Norristown v. Railway Co.*, 148 Pa. St. 87, 23 Atl. 1060; *City of Reading v. Traction Co.*, 24 Pa. Co. Rep. 629, 202 Pa. St. 571, 52 Atl. 106; *McKeesport v. Railway Co.*, 158 Pa. St. 447, 27 Atl. 1006. The method of recovery in many of these cases cited would seem to be explained only as an exception to the general rule that one person cannot, without request, perform the contract obligations or duties of another, and then sue for the benefit conferred. Mandamus also seems to be a proper remedy, and has been employed in some cases. *Florida v. Jacksonville A. & Ry. Co.*, *supra*; *People v. Fort Street, etc., Railway Co.*, 41 Mich. 413.

TAXATION—TRANSFER TAX—SHARES IN CONSOLIDATED CORPORATION—VALUATION.—New York Laws of 1896, p. 868, c. 908, § 220, as amended by Laws of 1897, p. 150, c. 284, § 2, imposes a tax upon the transfer of any personal

property * * * * "2. When the transfer is by will or intestate law, of property within the state, and the decedent was a non-resident of the state at the time of his death." Acting in good faith a New York railroad corporation and a Massachusetts corporation consolidated, but the consolidated corporation was separately organized under the laws of each state. One-sixth of the track mileage was in New York and the remainder in Massachusetts. A single issue of stock, however, represented all the property of the consolidated organization. A resident of Connecticut, being the owner of a number of shares in the consolidated company, devised them by will. On an appeal from an order fixing the transfer tax upon the basis of the full market value of said stock, *held*, (WERNER and CHASE, JJ., dissenting) that the stock in question should be taxed on a basis fixed by regarding the New York corporation as owning the property situate in New York and the Massachusetts corporation as owning that in Massachusetts, and each as owning a share of any property situate outside of either state or moving to and fro between the two states. *In re Cooley's Estate* (1906), — N. Y. —, 78 N. E. Rep. 939.

The conclusion reached in the case seems to be eminently just and reasonable, even if former decisions of the same tribunal do not logically lead to the same result. There can be little doubt but that for most purposes the consolidated corporation must be regarded as a domestic corporation. *Sprague v. Railroad Co.*, 5 R. I. 233; *Ashley v. Ryan*, 49 Ohio St. 504, 31 N. E. Rep. 721; s. c. aff'd 153 U. S. 436; *In re St. Paul, etc., R. Co.*, 36 Minn. 85; *Railway Co. v. Whitten*, 13 Wall. 270; *Railroad Co. v. Vance*, 96 U. S. 450; *Memphis, etc., R. Co. v. Alabama*, 107 U. S. 581; *Ohio, etc., R. Co. v. Weber*, 96 Ill. 443. The New York courts have so held, *Matter of Sage*, 70 N. Y. 220. In fact in the principal case the court justifies the taxation of the shares on the ground that the consolidated corporation is a domestic corporation and that the shares in such a corporation although owned by a non-resident have their situs within New York, and cites *Matter of Bronson*, 150 N. Y. 1, 44 N. E. Rep. 707, 34 L. R. A. 238, 55 Am. St. Rep. 632, and *In re Bushnell*, 172 N. Y. 649, 65 N. E. 1115. The consolidated corporation having been declared to be a domestic corporation, it is difficult to reconcile the conclusion in the present case with the decision in the case of *Matter of Palmer*, 183 N. Y. 238, 76 N. E. 16. In the latter case it was contended that the tax on the stock should be only "upon that proportion of its value, which represents the proportion of the capital and assets of the company employed within the State of New York." The court held, however, that "the assessment of the stockholder, is computed upon the value of his interest in the whole of the corporate property, as evidenced by the number of the shares of stock, which he holds. * * * * They evidence the extent of his proprietary interest and their assessment for taxation purposes must be upon that interest, regarded as an entity, and is unapportionable with reference to the situs of the corporate properties." It is true that the question of the effect of a consolidation of companies did not arise in the *Palmer* case, but since in the principal case the consolidated corporation is declared to be a domestic corporation the reasoning of the former case would seem to be applicable. It is obvious that the application of that reasoning would have

resulted in injustice in the present case but, it is suggested, that injustice as well as the present seeming departure from precedent might be obviated by a strict adherence to the single principle of "domicil" in the assessment of the tax. However, New York by statutes and decisions, seems to be pledged to the two principles—"situs and domicil." For obvious reasons the court took care to limit the application of the doctrine now announced to cases in which the consolidation has taken place in entire good faith.

VENDOR AND PURCHASER—BONA FIDE PURCHASER FOR VALUE—LIENS.—W. executed a trust deed to secure two notes, payable to P. On payment of one of the notes P. delivered it to W. without marking it "paid." Thereafter M., in collusion with W., represented himself to the trustees as owner of this note and, claiming it was unpaid, directed a sale of the property, which was sold to M. After obtaining a deed from the trustee he executed a deed of trust on the same property to a loan association for \$2,000.00 and conveyed the property to a trustee for the benefit of W's wife. She assumed payment of the debt due the loan association as part of the consideration which, however, she had not paid when she was notified of the invalidity of the sale under the deed of trust. *Held*, that wife of W., being the purchaser of a mere equity and not having paid the price, was not a bona fide purchaser for value as against complainant's lien for the payment of the other note secured by the original deed of trust. *Wasserman et al. v. Metzger* (1906), — Va. —, 54 S. E. Rep. 893.

In the opinion of the majority of the court she was not a bona fide holder for value. See *Doswell v. Buchanan's Executors* (Va.), 3 Leigh 365; *Lamar's Ex'or v. Hale*, 79 Va. 147, cited by the court. Actual payment, before notice, of the purchase price is indispensable. *Barstow v. Beckett*, 122 Fed. 140; *Trice v. Comstock*, 121 Fed. 620; *Rush v. Mitchell*, 71 Ia. 333. She purchased a mere equitable title and takes subject to all equities against her vendor. *Combs v. Nelson*, 91 Ind. 123; *Chew v. Barnett* (Pa.), 11 Serg & R. 389. One of the two dissenting judges went to great lengths to show that there was not sufficient notice, to the wife of W., of the fraud at the time she purchased; but the cases cited do not seem to be in point, as in those cases the purchasers were not purchasers of a mere equitable title and without actual payment of the purchase price as in this case. The majority were of the opinion that the fact that she had no notice of the irregularity in the sale or of M's fraud, makes no difference, as she acquired only such rights in the property as he had. *Chew v. Barnett*, *supra*. The two dissenting judges were of the opinion that because of the failure of P. to mark the note "paid" when delivered to W., thereby making possible the use of the note to accomplish the fraudulent sale and (as held by one of these judges) that because of the fact that the trustee was the agent of P. in making this sale, the equity of the wife of W. was the better equity, though junior in point of time to that of P. The majority were of the opinion that she was not so negligent as to lose her prior equity, citing *Biddle v. Bayard*, 13 Pa. 150 and other cases. The payee of a note upon payment owes no duty to the public to mark it "paid." Surrender of a note is sufficient discharge, *Vanderbeck*